

Resource Conservation District Accreditation Rulemaking

Initial Statement of Reasons

The Department of Conservation (Department) proposes to add Article 3, sections 3200, 3201, 3202, 3205, 3206, 3207, 3208, and 3209 to California Code of Regulations, Title 14, Division 2, Chapter 6. These changes to the regulations are necessary to implement Public Resources Code Sections 9062 and 9063.

INTRODUCTION

Resource Conservation Districts (Districts) are legal subdivisions of the state. They are special districts that maintain their own locally appointed or elected independent boards of directors. State law establishes Districts to implement projects on public and private lands that conserve soil and water; control runoff; and prevent, control, and stabilize soil erosion in open areas, agricultural areas, urban development, wildlife areas, recreational developments, and watersheds. Essentially, each District must assess its local conservation needs and develop programs to meet those needs.

State law requires the Department ~~of Conservation (Department)~~ to assist in the formation, organization, and operation of Districts. Currently, there are 98 Districts that manage diverse resource conservation projects covering more than 85 percent of the state. The Department provides assistance to Districts in their mission to promote the long-term sustainability of the state's rich and diverse working landscapes. This support can take the form of financial assistance, administrative education, and information and technical support.

State law grants Districts the right to form associations to coordinate resource conservation efforts on a larger level. The California Association of Resource Conservation Districts (Association) coordinates assistance to Districts, offers a structure for Districts to meet and set priorities, and represents the interests of California Districts to state and federal representatives.

~~Beginning in 2010, District Managers and Directors began a capacity building effort to develop a pathway to assist Districts statewide to remain and become more excellent, relevant, and visible. From Between 2011 to and 2013, the Association's President visited 91 Districts to solicit input on the effort and to and develop an understanding of the needs of Districts statewide. The Association's President confirmed that District capacity varied widely. Specifically, it was evident that some Districts were not meeting basic legal requirements while others were highly functional organizations effectively meeting the conservation needs of their communities. The visits prompted The District Managers and the Association President prompted the Association to initiate a collaborative process to develop a strategic plan to recognize District achievements and to increase District capacity statewide. With the intention of developing this strategy, the Association began meeting with District leaders.~~

As a result of those meetings, the Association convened 75 individuals from the Districts, the Association, and District partners to identify and develop common goals for all Districts. Through a series of conference calls held three times monthly over a year and a half, the group developed a vision and a set of standards to build capacity for Districts at all levels of performance. In November 2014, the Association officially adopted these goals and published them in *Planning for the Future: A Statewide Pathway to Excellence in Service*. The document provides a guide for Districts to model, identifying concrete goals, developing criteria to meet those goals, and providing examples to help Districts improve their programs and services, enhance their engagement with their communities, and maintain their responsiveness to their region's natural resource needs. The standards are divided into three different Tiers based on ~~levels of~~ performance.

This rulemaking adopts the goals and criteria of Tier 1, which focuses on the legal requirements of and good governance best practices for Districts. ~~In cooperation with the Association, the Department intends to initiate future rulemakings to expand the program to include Tiers II and III, to incentivize higher levels of performance.~~

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To ~~incentivize-recognize~~ Districts ~~to-that~~ achieve the goals outlined in *Planning for the Future* and to add value to their accomplishment, the Association formally requested that the Department establish an accreditation program. The Department determined that the rulemaking process was the most appropriate process to develop the proposed accreditation program and avoid underground regulations. The proposed accreditation program reflects the goals and criteria regarding basic legal requirements and best practices for good governance identified in *Planning for the Future*. Districts can apply for Tier I Accreditation on a voluntary basis. Those ~~unable-who need assistance~~ to achieve accreditation can seek non-monetary technical assistance from the Department and the Association.

The status conveyed by accreditation will ~~serve-as-an-incentive-for-Districts-to-improve-their-capacity-and-performance. Furthermore, it will~~ provide a third-party validation that the District in question is meeting legal requirements and best practices for good governance. This will enable the Department to easily identify District leaders as well as Districts that need additional assistance. The Department and the Association can then target their assistance efforts to better meet the needs of Districts at all levels. ~~Other governmental and non-governmental organizations could also use the proposed accreditation program as one method to evaluate Districts for financial assistance.~~

DETAILED STATEMENT OF SPECIFIC PURPOSE AND RATIONALE

§3200. Definitions.

A number of key terms found in Article 6 require definition because they are used to convey a specific meaning and could be subject to more than one interpretation. The purpose of §3200 is to define each of these key terms, which are usually included without modification to support consistent interpretations of the regulations.

The terms “Department,” and “District” are defined by statute in Public Resources Code sections 9017 and 9021, respectively. The definitions provided for these terms in proposed section 3200 are essentially identical to the statutory definitions. It is necessary to add these definitions to make clear that the statutory definitions are operative in Article 6.

The term “program” is defined to be the short-hand reference to the Resource Conservation District Accreditation Program established in Article 6. This short-hand reference is necessary to prevent the regulation from becoming unnecessarily wordy and lengthy.

Section 3200 is necessary to avoid ambiguity and ensure that those who are subject to the requirements of Article 6 are able to understand and interpret the regulation correctly.

§3201. Voluntary Review.

The purpose of section 3201 is to clarify that District participation in the proposed accreditation program is voluntary. This statement is necessary to clarify that the Department will not review all Districts for accreditation; it will only review those that have applied. Furthermore, the Department is not requiring accreditation as a condition for ~~non-monetary~~ technical assistance and outreach.

§3202. Tier I.

§3202a

The purpose of section 3202a is to establish the requirements a District must meet in order to achieve a Tier I Accreditation rating.

Districts are local government entities whose decisions fundamentally affect the public. As such, these Districts have a special responsibility to ensure that their management and decision-making processes meet or exceed best practices requirements. Good governance practices reflect these high standards.

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Good governance requires accountability, transparency, and responsiveness to the public. It also requires that government follow the rule of law, and is equitable, inclusive, and participatory. Furthermore, good governance requires effectiveness and efficiency. The proposed Tier I Accreditation rating would affirm that a District has best practices in place to make and implement legal and transparent decisions.

Of the 34 requirements for Tier I Accreditation listed on the form, 23 are required by State law. These are listed below:

- Annual Special District's Financial Transactions Report to the State Controller's Office
- Annual Local Government Compensation Report to the State Controller's Office
- Ethics Training
- Form 700 – Statement of Economic Interests
- Independent Audit
- Director's Oath of Office
- Brown Act Agenda Requirements
- Statement of Facts filed with the Secretary of State
- Conflict of Interest Code
- Reimbursement Policy
- Nondiscrimination Policy
- SB 272 Enterprise Systems Catalog posted to Website
- Sexual Harassment Literature provided to Employees
- Sexual Harassment Prevention Training provided to Directors and Required Staff
- Payroll Taxes filed and paid
- Reports and Information provided to Local Agency Formation Commission
- Sales Taxes submitted to Board of Equalization
- Bidding Policy
- Personnel Policy
- Workers' Compensation Insurance
- Liability Insurance
- Vehicle Insurance
- Premises Insurance

One of the primary purposes of each of these legal requirements is to ensure good governance.

~~However, some Districts are unaware of or struggle to meet these basic statutory requirements. While the Department and the Association provide technical support upon request and, as capacity allows, assist Districts on these statutory mandates, many Districts operate with severe funding and resource limitations. Given these constraints, these Districts may choose to focus their limited resources on providing programs and services. These Districts lack sufficient incentive to direct those limited resources to meeting the full requirements of State law when it comes at the expense of fulfilling their core mission of addressing their community's natural resource needs. Additionally, Many districts are meeting state requirements. However,~~ Districts who meet state law lack a ~~cost-effective~~ way to obtain confirmation from an unbiased third-party entity that they are in compliance ~~without paying costly legal fees.~~

~~Including the full requirements of State law in the Tier I Accreditation is necessary because it will create this incentive, providing a means by which Districts can rectify this problem.~~ This step will benefit these Districts by improving their general capacity for good governance. Furthermore, it will provide confirmation that Districts are fulfilling the requirements of state law to the benefit of Districts and their partners.

The Association identified and adopted the other eleven non-statutory requirements ~~—adoption of an annual plan, long range plan, public records request policy, vehicle use policy, and an annual budget; and~~

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~~the purchase of errors and omissions insurance~~—as integral to a District’s good governance capacity in *Planning for the Future: A Statewide Pathway to Excellence in Service*. In other words, the Association believes, and the Department concurs, that these requirements are equally important as the statutory mandates and that ~~they these requirements for accreditation will~~ improve and enhance a District’s level of accountability, transparency, responsiveness, equitability, inclusivity, effectiveness, and efficiency.

The following will explain the purpose, necessity, and benefit of each non-statutory Tier I requirement for accreditation.

Annual Plan and Long Range Plan: the purpose of these two items is to require each District to develop and adopt an annual plan and a long range plan, ~~as a requirement for to acquire~~ Tier I Accreditation. ~~Existing law Section 9413 of the Public Resources Code~~ encourages the development of these plans and identifies elements the plans should include, but does not require them. It is necessary to require the ~~sem~~ plans for accreditation to ensure that Districts are developing and adopting strategies to meet their short-, mid-, and long-term goals. These requirements will benefit Districts by encouraging them to regularly consider and review their community’s natural resource needs and to prioritize their approach to natural resource management and restoration activities. These plans will improve their services and provide the public with key information on each District’s activities. Those districts that need assistance to develop annual and long range plans can seek technical assistance from the Department and the Association.

Public Records Request Policy: the purpose of this item is to require each District to develop and adopt a public records request policy ~~as a requirement for to acquire~~ Tier I Accreditation. The Public Records Request Act guarantees that any person may inspect any non-exempt public record, as specified. It also requires that all public records remain open for inspection at all times during an agency’s office hours. This policy is necessary to ensure that Districts, including their employees and directors, are properly prepared to respond to requests for public records. It will benefit Districts by encouraging them to properly maintain and store public records and to think critically about how they communicate internally and externally about their mission, goals, and activities. Those districts that need assistance to develop a Public Records Request Policy can seek technical assistance from the Department and the Association.

Annual Budget: the purpose of this item is to require each District to develop and adopt an annual budget ~~as a requirement for to acquire~~ Tier I Accreditation. This is necessary to ensure that Districts are regularly reviewing their finances and planning for their needs. Furthermore, regardless of the source, all District funds are public funds. Thus, State law imposes restrictions on how Districts can spend their money. It is necessary to require Districts to develop an annual budget to ensure that the funds are spent properly. This requirement will benefit Districts by encouraging them to think strategically about how they use their limited, public resources in the most effective manner to achieve the short-, mid-, and long-term goals identified in the annual and long range plans. It will also provide the public with another source of information on how Districts spend public funds. Those districts that need assistance to develop an Annual Budget can seek technical assistance from the Department and the Association.

Associate Director Policy: the purpose of this item is to require each District that has an Associate Director to develop and adopt an associate director policy ~~as a requirement for to acquire~~ Tier I Accreditation. This is necessary for each District to outline the roles and responsibilities of its associate directors to create coordinated and effective leadership teams. It will benefit Districts by improving their organizational structure and providing a distinct purpose and mandate to each associate director. Those districts that need assistance to develop an Associate Director Policy can seek technical assistance from the Department and the Association.

Fee for Services Policy: the purpose of this item is to require each District that charges fee for services to develop and adopt a fee for services policy ~~as a requirement for to acquire~~ Tier I Accreditation. This is necessary to ensure each District that offers services for fees has established operating rules for fee for service type work. This will benefit Districts by providing clear guidance on one method of diversifying the

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District's funding sources. Those districts that need assistance to develop a Fee for Service Policy can seek technical assistance from the Department and the Association.

Investment Policy: the purpose of this item to require each District that invests a portion of its funds to develop and adopt an investment policy ~~as a requirement for to acquire~~ Tier I Accreditation. This is necessary to ensure that each District that invests a portion of its funds has considered and strategically identified which funds it may invest, how those funds may be invested, and under which conditions those funds may be removed from investment. This will benefit Districts by providing clear guidance on one method of diversifying the District's funding sources, which will strengthen their financial stability. Those districts that need assistance to develop an Investment Policy can seek technical assistance from the Department and the Association.

Reserve Policy: the purpose of this item is to require each District that maintains or plans to maintain a budget reserve to develop and adopt a reserve policy ~~as a requirement to acquire for~~ Tier I Accreditation. This is necessary to ensure each District that maintains or plans to maintain a budget reserve has established the procedure and identified a level of reserve funding necessary to achieve the District's specified goals. This will benefit Districts by helping to guide their financial management decision-making processes. Those districts that need assistance to develop a Reserve Policy can seek technical assistance from the Department and the Association.

Volunteer Policy: the purpose of this item is to require each District that offers a volunteer program to develop and adopt a volunteer policy ~~as a requirement for to acquire~~ Tier I accreditation. This is necessary to ensure that each District that offers a volunteer program has strategically considered how it can best utilize volunteers to aid in the accomplishment of the District's missions and goals. This will benefit Districts that offer a volunteer program by outlining the terms and conditions of volunteer responsibilities, improving the efficiency of the District's activities. Those districts that need assistance to develop a Volunteer Policy can seek technical assistance from the Department and the Association.

Vehicle Use Policy: the purpose of this item is to require each District that uses vehicles for District purposes to develop and adopt a vehicle use policy ~~as a requirement for to acquire~~ Tier I Accreditation. This policy is necessary to ensure the safety of and provide guidance to those individuals who drive vehicles for District purposes. It will benefit Districts by setting a clear standard for vehicle use and enable them to take necessary action if and when vehicles are used in a negligent manner, or for inappropriate purposes. Those districts that need assistance to develop a Vehicle Use Policy can seek technical assistance from the Department and the Association.

Errors and Omissions Insurance: the purpose of this item is to require each District to purchase and maintain errors and omissions insurance ~~as a requirement for to acquire~~ Tier I Accreditation. This insurance is necessary to protect the District, directors, and staff from allegations of negligence, breach of duty, defamation, malfeasance, and other claims against the District. Given that most Districts in California operate under severe funding constraints, the process of defending the District against one allegation of any of these claims could place the District under severe financial stress. This requirement will prevent Districts from needing to spend their limited financial resources on contesting these claims and thereby support their long-term financial viability. It will also benefit Districts by enabling them to focus on their stated missions and goals, increasing their effectiveness and efficiency. Those districts that need assistance to obtain errors and omissions insurance can seek technical assistance from the Department and the Association.

§3202b

The purpose of section 3205b is to limit the duration of Tier I Accreditation to twelve months. The Department determined that a twelve month period did not create an undue hardship for Districts and was necessary to ensure that accredited Districts continue to meet annual requirements. If the District is

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interested in maintaining accreditation, it must ~~reapply prior~~ submit proof that annual requirements have been met prior to the end of the twelve month period. Items that require annual renewal include:

- Annual Special District's Financial Transactions Report to the State Controller's Office
- Annual Local Government Compensation Report to the State Controller's Office
- Form 700 – Statement of Economic Interests
- Independent Audit
- Annual Plan
- Annual Budget
- New or Updated Board Member Oath of Office
- Workers' Compensation Insurance (if District has employees)
- Liability Insurance
- Vehicle Insurance
- Premises Insurance
- Any policies that have changed over the previous 12 months
- Any training requirements that have been updated over the previous 12 months

This section is necessary to clarify that accreditation is not permanent; it is only valid for twelve months. This will provide Districts a strong incentive to maintain their good governance practices, including updating and/or renewing their policies, plans, and insurance policies, at regular and predictable intervals. It will also provide an external reminder for Districts, even if there are significant turnovers in staff or board members. Furthermore, it will enhance the value of the accreditation for other governmental and non-governmental entities, because it will indicate that the District's good governance policies and practices are likely still in use.

§3205. Submittal.

§3205a

The purpose of subsection 3205a is to require the District to notify the Department at least five days prior to a District's submittal of its first application. The Department determined that the five day prior notification was necessary to provide adequate time for the Department to create an electronic filing system for the District, where it can submit the application and all associated documentation. This will reduce costs for the District associated with printing and mailing the application and documentation. It will also enable the District to submit an application at no cost instantly, once the account is ready, or in pieces overtime, at the District's convenience.

§3205b

The purpose of subsection 3205b is to clarify that if an application is insufficient, as determined by the Department, the District may re-submit its application at any time. This is necessary to clarify that if the District submits an incomplete application or the Department determines that it has not met the qualifications for accreditation, it can resubmit the application at its convenience. This will prevent the District from needing to wait a full year before reapplying for accreditation. Instead, it can submit any remaining necessary documentation or reapply at its convenience.

§3206. Department Review.

The purpose of section 3206 is to establish the Department's responsibilities regarding the review of applications. ~~Specifically, it~~ This section specifies that the Department must determine whether an application is complete within 30 days of receiving an application. The Department has determined that 30 days would offer a reasonable amount of time for Department review of the materials submitted and to

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respond to the District in a timely manner. ~~Furthermore, the Department must determine the District's eligibility for accreditation within 90 days of determining the completeness of an application. The Department determined that 90 days was necessary to allow enough time to complete the eligibility review and respond to the District in a timely manner.~~ If the District is ineligible for accreditation, the Department must provide an explanation of what the District must ~~improve~~ provide to meet accreditation. This section also clarifies that the Department may contact the District with any questions it may have while reviewing the material.

~~Each of t~~These provisions ~~is are~~ necessary to clarify the Department's rights and responsibilities upon receiving an application. ~~It will benefit Districts and the Department by creating~~ Creating reasonable expectations for when applicant Districts can expect responses and a final determination from the Department ~~will benefit Districts and the Department and.~~ ~~This will~~ enable both to plan accordingly.

§3207. Loss of Accreditation.

§3207a

The purpose of subsection 3207a is to establish that any District that does not submit ~~the any updated~~ information required for certification prior to the renewal date will lose accreditation. This is necessary to establish the District's responsibilities regarding renewal of accreditation and to clarify that an incomplete application for renewal is grounds for loss of accreditation. This will incentivize the District to maintain records that it is meeting the requirements for Tier I Accreditation in a format that facilitates a simple reapplication process. It is also important to clarify that the District must reapply prior to the renewal date. The Department determined that this was necessary to provide an incentive to Districts to reapply in a timely manner. The regulations do not require the Department to complete an assessment of the application for reaccreditation by the renewal date.

§3207b

The purpose of subsection 3207b is to establish that a District may lose accreditation if the Department becomes aware that the information provided for the accreditation is no longer valid or is not accurate. This is necessary to clarify that the Department may revoke a District's accreditation prior to the submission of an application for renewal if there is reason to believe that the District is no longer meeting the requirements for Tier I or if the information submitted in the last application was not accurate. Similar to subsection 3205b, this will enhance the value of the accreditation for other governmental and non-governmental entities, because it will indicate that, if the District's Tier 1 Accreditation has not been rescinded, the District is likely still meeting State law and best practices for good governance.

§3208. Department's Website.

The purpose of section 3208 is to require the Department to list on its website each of the Districts that have obtained accreditation. This is necessary to provide the public, including governmental and non-governmental entities, a verifiable source of information on the status of accreditation for all Districts. Thus, if a District applies for funding or assistance from another entity and would like to submit proof of its accreditation as a demonstration of its worthiness for assistance, it can easily and transparently prove the status of its accreditation.

§3209. Relationship of Certification to Funding.

The purpose of section 3209 is to establish that, when the Department has funding available to distribute to Districts, the Department may require Tier I certification as a component of eligibility. This is necessary to establish that the Department may choose to require Districts to meet state laws and best practices for good governance as a condition for eligibility for Department financial assistance. This will provide one incentive, in addition to the status conveyed by accreditation, to Districts to ~~bring their operations into~~

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maintain compliance with State law and improve their good governance practices, if they have not already done so.

DOCUMENTS RELIED UPON

The Department relied upon the following documents in proposing this rulemaking action:

- The Department's STD 399 for the proposed regulations.
- *Planning for the Future: A Statewide Pathway to Excellence in Service*, California Association of Resource Conservation Districts, November 2014.
- *California Resource Conservation District Director's Handbook*, Department of Conservation, 2015-2016.
- *The Resource Conservation District Guidebook: A Guide to District Operations and Management*, Department of Conservation and California Conservation Partnership, November 1999.

ECONOMIC IMPACTS

The Department has made an initial determination that the adoption of these regulations will NOT significantly affect the following:

- The creation or elimination of jobs within the State of California
- The creation of new businesses or the elimination of existing business within the State of California
- The expansion of businesses currently doing business within the State of California, and
- The health and welfare of California residents, worker safety, or the State's environment.

While the proposed regulations will impact those Districts that choose to seek accreditation, they do not apply to or affect businesses. Therefore, they will not create or eliminate businesses, affect their competitiveness, or impact the expansion of businesses currently doing business in the State. Based on the foregoing the Department has determined that there are no significant statewide adverse economic impacts directly affecting business, including the ability to compete. Additionally, these regulations do not impact the health and welfare of California residents, worker safety, or the environment. They strictly impact the governance capacity of Districts.

ALTERNATIVES CONSIDERED

The Department considered two alternatives to the proposed, prescriptive regulations: a performance-based accreditation program and a mandatory, prescriptive accreditation program.

Under the performance-based alternative, the Department could set general goals for Tier I, and allow Districts to prove that they meet those goals. The Department rejected this alternative because it would increase the difficulty of assessing eligibility for accreditation, which could be time-consuming and expensive. Additionally, the Department's decisions on accreditation under this alternative could be considered subjective. This could make the proposed accreditation program highly controversial. Furthermore, Tier I is inherently prescriptive. Proving that a District meets best practices for good governance implies that there are specific standards. State law provides a majority of these standards and the Association developed other recommended best practices in *Planning for the Future*. Therefore, the Department rejected this alternative because it would increase the expense and controversy of the program and because it is not a good fit to achieve the purpose of the program.

The Department also considered making the accreditation program mandatory. In other words, it would require all Districts to apply for accreditation at specified intervals. The Department rejected this alternative because it determined that a voluntary incentive structure most closely matches the existing relationship between Districts and the Department. Districts are legal subdivisions of the State that are

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focused on the local conservation and natural resource needs of their community. While the Department provides funding and assistance to help Districts, State law grants Districts significant autonomy and discretion to meet these needs. Mandating accreditation would disrupt this dynamic. Furthermore, some Districts will need time to meet the proposed requirements and apply for accreditation. It would be inefficient to require these Districts to apply for accreditation when they are unprepared and likely to fail.

Finally, as mentioned in the introduction, the Association developed the proposed accreditation program, in coordination with many Districts and partners, after an in-depth review of the individual capacity and performance of each District in California. This proposed rulemaking honors their multi-year effort to identify their weaknesses and develop a viable solution to improve their governance capacity.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The Department has determined that the proposed regulations do not duplicate or conflict with federal regulations.